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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,370	05/09/2005	Donald Johnstone Naismith	133089.00501(143593US01)	8785
34141	7590	08/29/2007		
Pepper Hamilton LLP 500 Grant Street One Mellon Bank Center, 50th Floor Pittsburgh, PA 15219-2502			EXAMINER PACKARD, BENJAMIN J	
			ART UNIT 1609	PAPER NUMBER
			MAIL DATE 08/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/510,370

Applicant(s)

NAISMITH ET AL.

Examiner

Benjamin J. Packard

Art Unit

1609

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 32-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 32-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>(4 sheets)</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by SIANI et al. "Controlled trial of long term oral potassium supplements in patients with mild hypertension" BRITISH MEDICAL JOURNAL, vol. 294, 6 June 1987 (1987-06-06).

SIANI et al., pages 1453-1456, discloses treatment of patients with 24 mmol/day (Lento-Kalium capsules (KCL); see page 1453, right-hand column, last four lines from the bottom) which led to a significant blood pressure reduction and concluded that moderate oral potassium supplements are associated with a long term reduction in blood pressure in patients who have mild hypertension (see abstract; last two paragraphs and page 1455, figure 3 and page 1455, right-hand column, first paragraph). The trials of SIANI et al used Lento-Laium capsules (24 mmol potassium daily), pg 1453, last line on page, where Lento-Laium is the Italian Brand name for potassium chloride capsules. SIANI et al further discloses the reduction of an average meaningful blood pressure response of 10% (pg 1455, paragraph 3). Hence, the teaching of SIANI et al. anticipate the subject matter of claims 1-7 and 12-13.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over SIANI et al. in light of MORRIS et al. (WO 90 04403).

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SIANI et al. teaches the use of potassium supplements. MORRIS et al. teaches the substitution of KCl for other salts (see for example claim 3). One skilled in the art would recognize when providing a potassium supplement, various salts could be used.

Claims 9-11, 16-29, 32-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over SIANI et al. in light of KAMPINGA et al. (US 6,455,511).

KAMPINGA et al. teaches compositions of foodstuff, specifically sports drinks, containing minerals, including potassium salt (see claims 2, 7, 14, 20, and 24), but not specifically the addition of low dose potassium salts. One skilled in the art would then adapt the teaching of low doses to the foodstuff compositions and limit the amount of supplement to a low dose. Further, one skilled in the food arts would recognize the benefit and ability to add supplements to solid foods and tablet forms. As beverages and solid food stuff generally come packaged with instructions and dietary information, it would be obvious to state instructions for use of the supplement. According to SIANI et al, the general schedule of administration is already set forth and one of ordinary skill in the art could easily find the most effective administration rate.

Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over SIANI et al. in light of WESTER et al. (US 4 855 289).

WESETER et al. teaches the combination of K⁺ supplementation with a further anti-hypertension compound (see abstract), but not the low dose potassium salt. One skilled in the art would adapt the K⁺ supplement amount to be similar in range to that disclosed as effective in SIANI et al.

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Conclusion


No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin J. Packard whose telephone number is 571-270-3440. The examiner can normally be reached on M-R 9-4:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BP
28 August 2007


Cecilia J. Teong
Senior Patent Examiner
Art Unit 1609